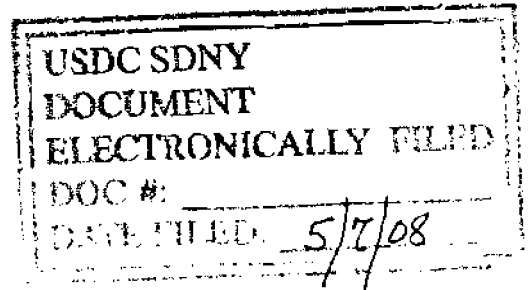


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NEIL JOHNSON,
HIAWAT[H]A BURKS,
RONALD COUNTS,
JU[D]E FERNAND,
KASEY HARGE,
DEVON PANDY,
CARL STEVENS,
ROBERT TAYLOR,
KEVIN WASHINGTON and
The Sunni Muslim Community at
FCI Otisville,



Plaintiffs,

07 Civ. 6641(LTS) (DFE)

- against -

MEMORANDUM AND ORDER

Warden J. KILLIAN,
Chaplain RABBI LASKIN,
and Case Manager D. WYNKOOP, in their
official and individual capacities,

Defendants.

-----X
DOUGLAS F. EATON, United States Magistrate Judge.

1. My prior orders dated December 20, 2007 and March 4, 2008 pointed out some weaknesses in Neil Johnson's original Complaint and in the First Amended Complaint (which added one defendant and was signed by additional pro se individuals who, unlike Mr. Johnson, are still inmates at FCI Otisville). My March 4 order offered Mr. Johnson a chance to prepare a Second Amended Complaint. However, his response (dated March 12 and received by the Pro Se Office on March 18) insists that he and the other inmates want to proceed on the First Amended Complaint. I hereby permit them to do so, on the conditions set forth in Paragraphs 2 and 3 of today's order. (I note that Mr. Johnson mailed his response only to the Pro Se Office, which sent it to the Docket Clerk for docketing but, as often happens, the Docket Clerk did not forward it to me; hence, I did not see it until April 29, when my law clerk conducted a review of all my cases. I direct Mr. Johnson, and any other plaintiff who chooses to write to me, to send the original to the Pro Se Office and to send a courtesy copy directly to me at Room 1360.)

-1-

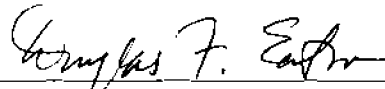
USDC SDNY
DATE SCANNED 5/7/08

2. The First Amended Complaint was signed by Mr. Johnson in FCI Elkton on January 18, 2008; on January 24, eight inmates signed it in FCI Otisville and one of them (Kevin Washington) mailed it to our Court's Pro Se Office. I will treat Mr. Washington as the contact person for the eight plaintiffs who are inmates at FCI Otisville. I will mail two copies of today's Memorandum and Order (and of any subsequent orders) to Mr. Washington. Similarly, I direct defense counsel to serve any documents by mailing one copy to Mr. Johnson at FCI Elkton and two copies to Mr. Washington at FCI Otisville. As to each such order or other document, I direct Mr. Washington to show the extra copy to the other plaintiffs at Otisville. If any of those plaintiffs should happen to leave FCI Otisville, I direct Mr. Washington to send each such plaintiff's new address to me, and to AUSA Li Yu, and to the Pro Se Office.

3. Much of the First Amended Complaint (§§14-21, 26-29) concerns the third and fourth causes of action, brought by Mr. Johnson only, against defendant Wynkoop only. The first two defendants have been served with a summons, but Ms. Wynkoop has not. **I direct the Pro Se Office to issue a summons addressed to Case Manager D. Wynkoop, and to send a service packet to Mr. Neil Johnson at FCI Elkton in Lisbon, Ohio.** Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, Mr. Johnson will then have 120 days to cause the U.S. Marshal's Office to serve the summons on Ms. Wynkoop. Mr. Johnson must promptly fill out the Form USM-285, and mail it to the U.S. Marshal's Office along with the summons and the required number of copies of the First Amended Complaint. Mr. Johnson should **not** request the Marshal's Office to make any new service on Warden Killian or Rabbi Laskin. On the other hand, due to the unusual posture of this case, I direct that all three defendants should, to the maximum feasible extent, respond to the First Amended Complaint with simultaneous answers (and/or motions addressed to Judge Swain) within 30 days after the summons is served.

4. Mr. Johnson's March 12 response annexes a copy of an order written by Chief Judge Wood in this case on August 10, 2007. She happened to be handling emergency motions in Part I, and she denied Mr. Johnson's motion for a temporary restraining order, which motion sought to prevent a transfer from FCI Otisville. He emphasizes one sentence from her order, where she wrote: "Plaintiff's argument that his lawsuit will be mooted if he is transferred is incorrect as a matter of law." In my view, Mr. Johnson's suit for an injunction is not mooted by the mere fact of transfer, but his suit for an injunction is mooted by his apparent concession that his transferee prison is not violating his right to perform congregational prayers.

5. Finally, Mr. Johnson's March 12 response, at page 5, says that "the Court should have also received the Plaintiffs' motion for appointment of counsel to represent them in this matter or in the interim to allow ... them to seek representation on their own." I have not received any motion for appointment of counsel; on the other hand, I certainly allow the plaintiffs to seek to find an attorney on their own, and I will allow the individual plaintiffs to represent themselves *pro se*.



DOUGLAS F. EATON
United States Magistrate Judge
500 Pearl Street, Room 1360
New York, New York 10007
Telephone: (212) 805-6175
Fax: (212) 805-6181

Dated: New York, New York
May 7, 2008

Copies of this Memorandum and Order are being sent to:

Neil Johnson
11679-014
Federal Correctional Institution-Elkton
P.O. Box 10
Lisbon, Ohio 44432

Kevin Washington (two copies)
10886-007
Otisville Correctional Facility
P.O. Box 1000
Otisville, NY 10963

Li Yu, Esq.
Assistant United States Attorney
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007

Pro Se Office

Hon. Laura Taylor Swain